

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

BETSY DeVOS, in her official capacity as
Secretary of the United States Department of
Education; and the UNITED STATES
DEPARTMENT OF EDUCATION, a federal
agency,

Defendants.

NO. 2:20-cv-01119-MLP

DECLARATION OF
BARBARA POSTHUMUS IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

I, BARBARA POSTHUMUS, hereby declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge. I am currently employed as Associate Superintendent.

2. I submit this declaration in support of the State of Washington's litigation against the United States Department of Education (Department) challenging the interim final rule it issued that requires Local Educational Agencies (LEA) to use one of two formulas to allocate Elementary and Secondary School Emergency Relief (ESSER) Funds provided by the CARES Act. I have compiled the information in the statements below through my personal knowledge or based on the documents that I have reviewed. I have familiarized myself with the information contained in the CARES Act sections regarding primary and secondary education as well as with

1 the Department's interim final rule. I am also familiar with the requirements of section 1117 of
2 the Elementary and Secondary Education Act (ESEA).

3 3. I am currently the Associate Superintendent of Business and Support Services at
4 Lake Washington School District and have served in various roles in the district since 1990. As
5 Associate Superintendent, I serve as Chief Financial Officer, providing oversight of the district's
6 financial, business and related auxiliary services. I also provide leadership to the Support
7 Services Department which includes facilities, capital resources and transportation.

8 4. Lake Washington School District has 56 elementary and secondary schools, with
9 31,106 students enrolled in the 2019-2020 school year. Of those schools, five participate in Title
10 I-A. Fifteen schools in our district are eligible to participate in Title I-A, but have chosen not to.

11 5. In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic
12 Security Act (the CARES Act) that provided funding to the States to assist with the costs
13 associated with disruptions in education due to COVID-19. Each State is required to allocate not
14 less than 90 percent of those funds as subgrants to LEAs. In turn, the CARES Act requires the
15 LEAs to provide equitable services "in the same manner as provided under section 1117 of the
16 ESEA of 1965 to students and teachers in non-public schools." Section 18003(d) of the CARES
17 Act enumerates eligible uses of the funds provided to LEAs.

18 6. My colleagues and I were initially relieved when Congress allocated money for
19 LEAs to support students, families, and teachers impacted by COVID-19 and the related
20 disruptions. Eleven percent of students in our district come from low-income families that rely
21 on services provided by our schools, including but not limited to:

- 22 a. Free and reduced-price meals;
- 23 b. Supplemental after-school programs;

24 7. Other students are facing added challenges of remote learning provided online.
25 Parents and families have expressed difficulty with the responsibility of homeschooling their
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1 children while managing their own jobs during the pandemic. Teachers have also reported
2 pedagogical challenges associated with remote learning.

3 8. The cost to Lake Washington School District of providing services has increased
4 as a consequence of the COVID-19 pandemic. For example, technology and professional
5 development expenses have dramatically increased; and new expenses, including personal
6 protective devices and sanitation devices and supplies, now must be factored into budgets.

7 9. Our district anticipates receiving \$1,692,887 of ESSER Funding. As of
8 July 14, 2020 we have spent \$976,525 and the district plans to spend the full grant amount by
9 fall 2020 on the following services:

10 a. Providing online support and a technology helpline for students as they
11 learn to use new technology for distance learning;

12 b. Hiring new staff to lead and support the transition to distance learning;

13 c. Providing childcare to first responders and other members of the
14 community;

15 d. Developing trainings for students, staff and parents on how to use
16 technology platforms and best practices for distance learning;

17 e. Providing wireless internet access to students who do not have internet
18 connectivity at home;

19 f. Covering extra staffing costs;

20 g. Purchasing sanitizing, cleaning supplies, and equipment;

21 h. Investing in new technology to enable and improve distance-learning;

22 i. Providing distance-learning related professional development services for
23 faculty and staff;

24 j. Develop learning resources to ensure grade level standards are met as
25 schools toggle between in-person, hybrid and remote learning environments;
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1 k. Develop professional learning modules to support key stakeholders,
2 including teachers, parents and students to access effective instruction throughout the
3 school year; and

4 l. Providing required Personal Protective Equipment (PPE).

5 10. On June 25, 2020, the Department released an interim final rule (IFR) concerning
6 ESSER Funds. The rule was published in the Federal Register and became effective on
7 July 1, 2020. The IFR requires LEAs to use one of two formulas to allocate ESSER Funds
8 between public and private institutions. The first formula—the “enrollment-based
9 formula”—requires the district to calculate the proportional share for private schools by
10 comparing the total enrollment of participating private schools to the total enrollment in both
11 public and private schools. The second formula—the “poverty-based formula”—permits LEAs
12 to use the formula provided in section 1117(a)(4)(A), but requires the schools to only administer
13 the funds to students participating under Title I, Part A of the ESEA.

14 11. However, these formulas are inconsistent with the mandate of the CARES Act
15 and the formula Lake Washington School District typically uses under section 1117(a)(4)(A).

16 12. The rule requests the districts to consult with the non-public schools but there is
17 no method for defining their enrollment in order determine their share of the funds, thus leaving
18 our school district with uncertainty on how many dollars we will be eligible to receive and spend.

19 13. Both available formulas under the final rule impair our district’s ability to allocate
20 ESSER Funds to students, teachers, and families in our district who are most in need of additional
21 support.

22 a. If Lake Washington School District opts to use the Department’s poverty-
23 based formula, it must deny CARES Act ESSER Funds to all schools that did not
24 participate in Title I programs for the previous year. This excludes 51 school and 29,160
25 students from relief authorized by Congress under the CARES Act, thus harming their
26 students, families, and teachers. In our district, 15 schools are eligible to receive Title I

1 funding but opt not to do so. Consequently, 2,790 low-income students—who are most
2 in need of relief—will be excluded from funding under this formula.

3 b. If Lake Washington School District opts to use the Department’s
4 enrollment-based formula, private schools would receive an increase in funds to private
5 schools, some of which have large endowments and are able to shoulder the increased
6 costs of the pandemic, at the direct expense of the district’s public schools. Any
7 diminishment in the ESSER Funds that go to our public schools will reduce the services
8 that our district is able to provide to our students, families, and teachers who are most in
9 need of relief.

10 14. Any diminishment in funds harms Lake Washington School District’s ability to
11 accomplish its mission for each student to graduate prepared to lead a rewarding, responsible
12 life as a contributing member of our community and greater society. Public schools already face
13 budgetary constraints, significant increases in costs to reopen school this fall and uncertainly
14 about funding. The Department’s restrictions come at a time when resource-strapped institutions
15 are scrambling to prepare for the coming school year while continuing to support needy students
16 who are disproportionately impacted by the disruptions caused by COVID-19.

17 15. In addition, by breaking from the traditional approach governed by section
18 1117(a)(4)(A) of the ESEA and introducing novel formulas, the rule is pulling additional
19 resources from within the school district to accommodate and administer this new approach. The
20 administrative burden of adopting a new formula to allocate the funds comes at a time when
21 districts are already understaffed and overworked, adding yet another obstacle for school districts
22 attempting to create an effective and equitable learning environment for students in the midst of
23 the pandemic. As a result of this rule, we would have to consult with non-public schools both
24 within and outside of our district for a second time since May. When consulting with non-public
25 schools during the traditional consultation, setting up times for consultation requires multiple
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1 emails to get the non-public schools to identify the grants for which they want equitable services
2 and to schedule times for consultations.

3 16. Additionally, the Department's requirement that consultation with private
4 schools occur prior to any expenditure of funds imposes an administrative burden that impairs
5 the district's ability to administer the emergency relief funds in a timely fashion. The CARES
6 Act was passed in March, yet the Department imposes this novel requirement with the IFR it
7 released in late June. This leaves our district in a state of uncertainty about the lawfulness of
8 expenditures incurred prior to the Department's IFR.


9 17. Lake Washington School District runs the risk of losing funds if they are not
10 allocated properly even though there is no specific data that is available to effectively
11 demonstrate what should be allocated. Department if ESSER Funds are not allocated according
12 to one of the two formulas. Because of budgetary restraints, the district would not be able to
13 retroactively pay private schools a greater share of the ESSER Funds than originally allocated
14 under the formula required under section 1117(a)(4)(A).

15 18. If the Department is not immediately enjoined from enforcing the IFR, Lake
16 Washington School District faces severe consequences. Educators and administrators are already
17 racing against the clock to prepare for the start of the 2020–21 school year and address the
18 technological, structural, and pedagogical challenges that face them. The delay in funding
19 already impedes Lake Washington School District's ability to plan and coordinate critical
20 expenditures for students and teachers, leaving Lake Washington School District in a state of
21 uncertainty regarding the amount of funding available for critical programs like free and
22 reduced-price meals, access to internet connectivity, and PPE for students and teachers. These
23 programs are essential to low-income students who are already severely impacted by the
24 pandemic and critical to closing opportunity gaps in educational achievement that have the
25 potential to widen during this unparalleled time.
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1 19. Further, Lake Washington School District already faces significant
2 administrative costs at a time when districts are already dealing with substantial resource
3 constraints. Modifying existing plans to accommodate the unanticipated provisions of the
4 Department's rule diverts time and staff resources that are already in short supply. At this crucial
5 moment of preparation for the upcoming academic year under unprecedented conditions, any
6 reduction, withholding, or delay in emergency funding harms both the State and its most
7 vulnerable students.

8 I declare under penalty of perjury under the laws of the State of Washington and the
9 United States that the foregoing is true and correct.

10 DATED this 22 day of July 2020, at Redmond, Washington.

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14 BARBARA POSTHUMUS
15 Associate Superintendent
16 Business and Support Services
17 Lake Washington School District
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